Datuk Bandar Kuala Lumpur v Mohd Suhaily bin Tambi

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NOS W-01(IM)-164–03 OF 2023 AND W-01(IM)-165–03 OF 2023
HANIPAH FARIKULLAH, AZMAN ABDULLAH AND COLLIN SEQUERAH JJCA
8 JANUARY 2024

Civil Procedure — Interrogatories/discovery — Judicial review ('JR') — Respondent filed JR application to challenge local authority's order to demolish renovations on his property — Before hearing of JR application, respondent applied for interrogatories and discovery of documents against local authority to show it had abused its powers and acted against him in mala fide and discriminatory manner — Whether High Court rightly allowed said applications as it enabled court to dispose of the JR application justly and fairly — Whether High Court's allowing of the interrogatories and discovery were appealable as they were not 'rulings made in the course of a trial or hearing' and therefore were not caught by s 3 of Courts of Judicature Act 1964

The respondent had submitted building plans to the appellant for approval to carry out renovation works on his property. About a month after works commenced following the approval of the plans, the appellant ordered the respondent to stop work, tear down structures that were not constructed in accordance with the approved plans and ensure that future works did not deviate from the plans. In connection with that violation, the respondent paid a compound fine under s 70 of the Street, Drainage and Building Act 1974. Several months after the renovation works were completed, an article appeared on Facebook about the subject of unapproved building renovations. A photograph of the respondent's premises was attached to that article without the respondent's knowledge. The contents of the article, which had gone viral, infuriated the director of the appellant's building control department who sought an explanation from the respondent and his architect's representative. Thereafter, the respondent was ordered to demolish structures on his property that had not complied with the approved building plans and his property was sealed to prevent him from occupying it. The respondent obtained leave of court to file a judicial review ('JR') application to challenge the demolition order and related actions. Pending the hearing of the JR application, the respondent applied under the Rules of Court 2012 for interrogatories and discovery of documents against the appellant. This was because the respondent had obtained photographs and other documentary evidence that allegedly showed that the appellant had treated him unfairly when it had not taken similar action against others in his locality who had renovated their properties either without obtaining the appellant's approval or without complying with

approved plans. To enable the appellant to refute the respondent's allegations and to allow the court to make a fair and just decision on the JR application, the High Court held that the applications for interrogatories and discovery were relevant and necessary and should be allowed. The respondent raised a preliminary objection challenging the competency of the instant appeals against the High Court's decisions on the ground that they were not appealable as they were merely interlocutory rulings and not judgments or orders which finally disposed of the rights of the parties. Reliance was placed on s 67(1) read with s 3 of the Courts of Judicature Act 1964 ('the CJA').

Held, unanimously dismissing the appeals:

(1) In *Kempadang Bersatu Sdn Bhd v Perkayuan OKS No 2 Sdn Bhd* [2019] 4 MLJ 614, the Federal Court ('FC') held that in determining whether or not an order was a 'ruling' within the meaning of s 3 of the CJA, it was important to determine at what juncture it was made — whether it was issued in the course of a trial or hearing and whether it had the effect of disposing of the final rights of the parties. The FC held that If the order was not made in the course of a trial or matter, regardless of the fact that it did not dispose of the rights of the parties, such an order was not a ruling as defined in s 3 of the CJA and was therefore appealable (see para 26).

(2) The instant appeals emanated from interlocutory matters in the course of a judicial review application which had yet to be heard. The orders appealed against were not made in the course of a trial or matter and were therefore not 'rulings' within the meaning of s 3 of the CJA and were thus appealable. The appeals were competent and the preliminary objection was dismissed (see paras 28–30).

(3) The High Court judge had correctly taken into account all relevant legal principles in deciding to allow the respondent's applications for interrogatories and discovery of documents. They were relevant or necessary for the court to dispose fairly of the JR application as they related to the issues raised in the JR application such as whether the appellant had acted within its jurisdiction or had abused its powers, whether its acts towards the respondent were procedurally proper and in keeping with the rules of natural justice or whether they were unreasonable, mala fide, discriminatory or even illegal. The High Court had not committed any error that warranted appellate interference (see paras 32–75).

[Bahasa Malaysia summary

Responden telah mengemukakan pelan bangunan kepada perayu untuk kelulusan bagi menjalankan kerja-kerja pengubahsuaian hartanahnya. Kira-kira sebulan selepas kerja-kerja dimulakan berikutan kelulusan pelan,

perayu mengarahkan responden menghentikan kerja, merobohkan struktur yang tidak dibina mengikut pelan yang diluluskan dan memastikan kerja-kerja akan datang adalah mengikut pelan. Sehubungan dengan pelanggaran itu, responden membayar denda kompaun di bawah s 70 Akta Jalan, Parit dan Bangunan 1974. Beberapa bulan selepas kerja-kerja pengubahsuaian selesai, satu artikel muncul di Facebook mengenai subjek pengubahsuaian bangunan yang tidak diluluskan. Sekeping gambar premis responden telah dilampirkan pada artikel tersebut tanpa pengetahuan responden. Kandungan artikel itu, yang telah menjadi tular, menimbulkan kemarahan pengarah jabatan kawalan bangunan perayu yang meminta penjelasan daripada responden dan wakil arkiteknya. Selepas itu, responden diperintahkan untuk merobohkan struktur pada hartanahnya yang tidak mematuhi pelan bangunan yang diluluskan dan hartanahnya ditutup untuk mengelakkannya daripada mendudukinya. Responden mendapat kebenaran mahkamah untuk memfailkan permohonan semakan kehakiman ('SK') bagi mencabar perintah perobohan dan tindakan berkaitan. Sementara menunggu perbicaraan permohonan SK, responden memohon di bawah Kaedah-Kaedah Mahkamah 2012 untuk interogatori dan penzahiran dokumen terhadap perayu. Ini kerana responden telah mendapatkan gambar dan bukti dokumentari lain yang didakwa menunjukkan perayu telah melayannya secara tidak adil apabila tidak mengambil tindakan yang sama terhadap orang lain di kawasannya yang telah mengubahsuai hartanah mereka sama ada tanpa mendapat kelulusan perayu atau tanpa mematuhi pelan yang diluluskan. Bagi membolehkan perayu menyangkal dakwaan responden dan membenarkan mahkamah membuat keputusan yang adil dan saksama mengenai permohonan SK, Mahkamah Tinggi memutuskan bahawa permohonan untuk interogatori dan penzahiran adalah relevan dan perlu dan harus dibenarkan. Responden membangkitkan bantahan awal yang mencabar kecekapan rayuan semasa terhadap keputusan Mahkamah Tinggi atas alasan ia tidak boleh dirayu kerana ia hanyalah keputusan interlokutori dan bukan penghakiman atau perintah yang akhirnya melupuskan hak pihak-pihak. Kebergantungan diletakkan pada s 67(1) dibaca dengan s 3 Akta Mahkamah Kehakiman 1964 ('AMK').

Diputuskan, sebulat suara menolak rayuan:

(1) Dalam *Kempadang Bersatu Sdn Bhd lwn Perkayuan OKS No 2 Sdn Bhd* [2019] 4 MLJ 614, Mahkamah Persekutuan ('MP') memutuskan bahawa dalam menentukan sama ada sesuatu perintah itu adalah 'ketetapan' dalam pengertian s 3 daripada AMK, ia adalah penting untuk menentukan pada persimpangan apa ia dibuat — sama ada ia dikeluarkan semasa perbicaraan atau pendengaran dan sama ada ia mempunyai kesan melupuskan hak akhir pihak-pihak. MP berpendapat bahawa Jika perintah itu tidak dibuat semasa perbicaraan atau perkara, tanpa mengira fakta bahawa ia tidak melupuskan hak pihak-pihak, perintah sedemikian bukanlah satu ketetapan seperti yang ditakrifkan

dalam s 3 AMK dan telah oleh itu boleh dirayu (lihat perenggan 26).

(2) Rayuan semasa berpunca daripada perkara interlokutori semasa permohonan semakan kehakiman yang masih belum didengar. Perintah yang dirayu tidak dibuat semasa perbicaraan atau perkara dan oleh itu bukan 'ketetapan' dalam pengertian s 3 AMK dan oleh itu boleh dirayu. Rayuan adalah cekap dan bantahan awal telah ditolak (lihat perenggan 28–30).

(3) Hakim Mahkamah Tinggi telah mengambil kira dengan betul semua prinsip undang-undang yang berkaitan dalam memutuskan untuk membenarkan permohonan responden untuk interogatori dan penzahiran dokumen. Mereka adalah relevan atau perlu bagi mahkamah untuk melupuskan permohonan SK secara adil kerana ia berkaitan dengan isu yang dibangkitkan dalam permohonan SK seperti sama ada perayu telah bertindak dalam bidang kuasanya atau telah menyalahgunakan kuasanya, sama ada tindakannya terhadap responden adalah mengikut prosedur secara wajar dan selaras dengan peraturan keadilan semula jadi atau sama ada ia tidak munasabah, mala fide, bersifat diskriminasi atau malah menyalahi undang-undang. Mahkamah Tinggi tidak melakukan sebarang kesilapan yang memerlukan campur tangan rayuan (lihat perenggan 32–75).]

Cases referred to

Associated Provincial Picture Houses Ltd v Wednesbury Corp [1948] 1 KB 223, CA (refd)

Council of Civil Service Unions & Ors v Minister for the Civil Service [1985] AC 374; [1984] 3 All ER 935, HL (refd)

Kempadang Bersatu Sdn Bhd v Perkayuan OKS No 2 Sdn Bhd [2019] 4 MLJ 614, FC (refd)

Overseas-Chinese Banking Corp Ltd v Norman Wright & Ors [1989] 3 MLJ 73, HC (refd)

Pengarah Tanah dan Galian, Wilayah Persekutuan v Sri Lempah Enterprise Sdn Bhd [1979] 1 MLJ 135, FC (refd)

Rekapacific Bhd v Securities Commission & Anor and other appeals [2005] 2 MLJ 269; [2004] 2 MLRA 571; [2005] 2 CLJ 108; [2005] 2 AMR 489, CA (refd)

Sheikh Abdullah bin Sheikh Mohamad v Kang Kock Seng [1975] 1 MLJ 89, FC (refd)

Yekambaran s/o Marimuthu v Malayawata Steel Berhad [1993] MLJU 96; [1993] 4 MLRH 380; [1994] 2 CLJ 581, HC (refd)

Legislation referred to

Courts of Judicature Act 1964 ss 3, 67, 67(1), 68
Rules of Court 2012 O 24, O 24 r 11(2), O 26 r 1, 1(1), O 53, O 53 r 6
Street, Drainage and Building Act 1974 ss 70, 70(13)(b), 72(1)

Appeal from: *Mohd Suhaily bin Tambi v Datuk Bandar Kuala Lumpur* [2023] MLJU 1276 (High Court, Kuala Lumpur)

Mohamed Izzul Faris (with Farah Zuleika bt Mohamed) (Syed Ibrahim & Co) for the appellant.
Godfrey Thomas Fernandez (with Nursyahidah Mohd Jasmy) (GT Fernandez & Co) for the respondent.

Collin Sequerah JCA:

INTRODUCTION

[1] The respondent filed an application for a judicial review dated 8 July 2021 (encl 1) under O 53 of the Rules of Court 2012 ('the ROC') to challenge a demolition order issued by the appellant on 30 April 2021 in respect of the respondent's premises at No 23, Jalan Pantai Murni 3, Pantai Hill Park, 59200 Kuala Lumpur.

[2] The respondent subsequently filed an application for interrogatories to be administered to the appellant dated 20 December 2021 (encl 19) under O 53 r 6 of the ROC read together with O 26 r 1(1) of the ROC in relation to the respondent's application for judicial review in encl 1.

[3] The respondent also filed a discovery application dated 20 December 2021 (encl 21) under O 53 r 6 of the ROC read together with O 24 r 11(2) of the ROC to seek discovery and inspection of certain documents in relation to the appellant's application for judicial review in encl 1.

[4] The learned High Court judge ('HCJ') allowed both applications on 6 March 2023. These are the appeals against the dismissal of both applications filed by the appellants which were heard together.

[5] In addressing the merits of these appeals, the scope of our focus is only in respect of the interlocutory applications from which these appeals emanate from and we have avoided considering the merits or otherwise of the judicial review proper save where neccessary.

BACKGROUND FACTS

[6] The relevant and pertinent background facts have been adequately set out by the learned High Court judge in his grounds of decision and we can do no better than to reproduce it with neccesary modifications as follows.

[7] The respondent is the registered proprietor of the premises held under

Mukim Grant No 40974, No Lot 54446, Mukim Kuala Lumpur, District Kuala Lumpur, Federal Territory of Kuala Lumpur and bearing the postal address of No 23, Jalan Pantai Murni 3, Pantai Hill Park, 59200 Kuala Lumpur ('the said premises').

[8] On 21 February 2020 the respondent, through Ahmad Zakuan Architect ('the said architect'), submitted his application to the appellant for the requisite approvals to carry out renovation works for the said premises ('the renovation project').

[9] The approval for the renovation project together with the approved building plans for the same was granted by the appellant on 20 May 2020 ('the said building plans'), as a result of which construction work at the site of the said premises commenced on 1 June 2020.

[10] On 6 July 2020, the appellant issued a notice under s 70 of the Street, Drainage and Building Act 1974 (Act 133) ('the s 70 notice'), informing that the construction works for the renovation project had deviated from the said building plans and hence was a violation of s 70(13)(b) of Act 133. According to the s 70 notice, the respondent was required within 30 days:

(a) to stop the construction of the building/structure in question;

(b) to direct the owner to demolish the additional structure built that had deviated from the said building plans;

(c) to coordinate the construction on site according to the said building plans; and

(d) to maintain the construction site in a clean and safe condition.

[11] On 9 July 2020, the appellant issued a notice about an offence that has been committed under s 70(13)(b) of Act 133 (*notis tentang kesalahan yang telah dilakukan di bawah s 70(13)(b) Akta 133*) ('the s 70(13)(b) notice'), to inform the respondent that the proposed construction on the site was not in accordance with the said building plans for the renovation project. The s 70(13)(b) notice further stated that the appellant's compound officer could be met to give the respondent an opportunity to settle the matter out of court so that the prosecution need not be proceeded.

[12] On 28 July 2020, the respondent met with the appellant's compound officer to negotiate to settle the s 70(13)(b) notice out of court. At the said meeting, the appellant's compound officer agreed to set the compound amount to be paid by the respondent at RM2,000. The respondent paid the said compound amount of RM2,000 on 7 August 2020 to settle the s 70(13)(b) notice out of court.

[13] In the meantime, the construction works in relation to the renovation project were completed on 15 December 2020.

[14] On 19 April 2021, a person by the name of Ahmadkhairul Sabirin bin Ahmad Rosli ('Ahmadkhairul'), wrote an article on Facebook, about unapproved building renovations ('the said Facebook article'). In the said Facebook article, Ahmadkhairul, without the knowledge and permission of the respondent, had referred to a picture of the said premises as a reference. The notes made by Ahmadkhairul in the Facebook article were as follows:

> 19 Apr
>
> KESALAHAN BIASA KETIKA RENOVATE RUMAH
>
> Kebiasaannya kita ni bila dah beli rumah, rasa kita nak buat apa pun boleh, ye lah rumah kita kan, hasil titik peluh dari kecil menabung, dah besar ni mesti nak renovate rumah bagi cantik. Renovate? Tak ada masalah tapi tau tak apa yang boleh dan tak boleh?
>
> 1. Tiada permit
>
> Kalau diikutkan, kerja-kerja kecil seperti tukar tile dapur, toilet pun perlu permit. Permit ubahsuai dalaman/permit kerja kecil namanya. Untuk kerja yang tidak mengubah struktur sedia ada. Nak letak tong roro di depan rumah pun perlu ada permit ya. Tak boleh suka-suka pasal depan rumah dah bukan kawasan kita, itu kawasan PBT dah. Jadi cuba pergi ke majlis dan bertanya kan hal ini, untuk mengelakkan kita kena denda waktu random spot check oleh majlis.
>
> 2. Tambah floor area tanpa kelulusan PBT
>
> Alah tambah dapur belakang je bang, alah tambah bilik tepi sikit saja. Jangan main-main ya main tambah kiri kanan atas tanpa kelulusan majlis, kalau tertangkap, ready lah duit untuk bayar denda.
>
> Nak renovate tambah floor area ni memerlukan kelulusan dari PBT. Tak boleh terus hire kontraktor dan jalan terus. Salah. Hire arkitek dan arkitek akan selesaikan urusan untuk menyediakan dan mendapatkan pelan lulus dari PBT.
>
> Arkitek mahal? Saja nak beritahu, kalau majlis tahu anda buat renovation tanpa pelan lulus, denda 10x dari wang proses pelan dan kena submit lalu arkitek juga. Mana lagi mahal? Ikut cara betul ke salah? Boleh fikir-fikirkan.
>
> 3. Tak bincang dengan jiran
>
> Sebelum nak renovate, berbincang lah dengan jiran dulu. Pasal bila bising kerja renovate, mereka yang kena hadap. Kalau 8 bulan bising, 8 bulan lah mereka makan hati. Last-last jiran sendiri yang report ke PBT, tambah pula tak ada kelulusan. Dah satu hal pula.
>
> Tak rugi berbaik dengan jiran. Lagi pula kepada siapa yang baru berpindah dan terus renovate rumah, jiran pun tak kenal, main langgar terus renovate.
>
> Sekarang pun kalau nak renovate memang memerlukan consent dari jiran. Macam borang yang kita dah inform jiran kita nak renovate.

A Percayalah, tak rugi berbaik dengan jiran.

4. Renovate sampai line pagar depan.

Perlu diingat, walaupun DALAM kawasan pagar tu rumah anda, tak bermakna anda boleh buat rumah sampai pagar, haha. Tak boleh ya. Kalau rumah, perlu ada
B anjakan sehingga 6.1m atau 20 kaki sari line pagar/line sempadan. Itu adalah kehendak PBT. Anda boleh didenda jika berbuat demikian. Boleh jadi akan dirobohkan. Ikut budi bicara majlis, apa pun saya ingat kan awal-awal, tak boleh ya. Cuba rujuk arkitek atau PBT kalau tak percaya.

5. Renovate LUAR dari pagar depan!

C

Ini level legend. Biasa ni level-level T20 ni. Dia nak buat apa? Dia nak buat guard house weh! Gated and guarded community dah, tapi rasa tak selamat lagi. Sayang kan Mustang punya pasal, dia buat pondok guard luar dari pagar. Tak boleh ya. Terang lagi bersuluh tak boleh. Kalau bertanya dengan majlis ni, confirm dia jeling punya. Tak sempat tanya dah kena reject. Haha.

D

6. Submit pelan lulus lain, buat di site lain!

Jenis ni ada juga. Submit untuk permit kelufusan saja, lepas tu dibuat lebih fagi dari ikut pelan lufus. Banyak kes arkitek pun tak tahu. Sudah nya, arkitek tarik diri, CCC pun tak ada. Ini pun tak boleh ya.

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To sum up, ikut lah undang-undang. Mudah. Jangan kerana terlalu ingin berjimat, hujung nya kita rugi juga.

Ar. Ahmadkhairul Sabirin Malu bertanya, duit lebur.

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[15] On 28 April 2021, Pn Norizan bt Sulaiman ('Pn Norizan'), the Director of the appellant's Building Control Department, summoned the respondent and the said architect's representative regarding the said Facebook article. Pn Norizan was very bitter and angry with the respondent because the said
G Facebook article had gone viral on Facebook.

[16] At the material time, the architect's representative tried to negotiate with Pn Norizan to allow him to submit an application to amend the building plans for the respondent's premises.

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[17] However, Pn Norizan was adamant that any such amendment application would not be approved by the appellant. Pn Norizan had also threatened that if the appellant's demolition order was not complied with immediately, the respondent would be imprisoned.

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[18] On 30 April 2021, the appellant proceeded to issue a notice to the said architect ('the demolition notice'), ordering him to stop construction of the building/structure and to demolish the building/structure on the said premises that had not been approved ('the said decision'). The appellant then proceeded

to seal up the said premises thereby preventing the respondent from occupying the same.

[19] Hence, the present judicial review application filed by the respondent. Leave for judicial review was granted by the High Court on 8 September 2021. Pursuant to this, the respondent filed encls 19 and 21 for interrogatories and for discovery respectively.

PRELIMINARY OBJECTION

[20] Before dealing with the appeals proper, it is pertinent to deal first with the preliminary objection ('PO') raised by the respondent.

[21] The PO is that this court has no jurisdiction to hear these appeals decided by the High Court on the basis that it does not finally dispose off the rights of the parties before the High Court.

[22] The respondent contends that the applications made for discovery and for interrogatories constitute rulings as opposed to orders which finally dispose off the rights of the parties and hence are not appealable.

[23] Section 67 of the Courts of Judicature Act 1964 ('the CJA') provides that the Court of Appeal has jurisdiction to hear and determine appeals of any judgement or order of any High Court in any civil cause or matter whether made in the exercise of its original jurisdiction or appellate jurisdiction.

[24] Matters which are non-appealable are set out in s 68 as follows:

> 68 Non-appealable matters
>
> (1) No appeal shall be brought to the Court of Appeal in any of the following cases:
>
> (a) when the amount or value of the subject matter of the claim (exclusive of interest) is less than two hundred and fifty thousand ringgit, except with the leave of the Court of Appeal;
>
> (b) where the judgment or order is made by consent of parties;
>
> (c) where the judgment or order relates to costs only, which by law are left to the discretion of the Court, except with the leave of the Court of Appeal;
>
> (d) where, by any written law for the time being in force, the judgment or order of the High Court is expressly declared to be final;
>
> (e) where a High Court dismissed any application for a summary judgment;

(f) where a High Court dismissed any application to strike out any writ or pleading; and

(g) where a High Court allowed any application to set aside a judgment in default.

(2) (Repealed by Act A886).

(3) No appeal shall lie from a decision of a Judge in Chambers in a summary way on an interpleader summons, where the facts are not in dispute, except by leave of the Court of Appeal, but an appeal shall lie from a judgment given in court on the trial of an interpleader issue.

[25] The definition of 'decision' is contained in s 3 of the CJA as follows:

'decision' means judgment, sentence or order, but does not include any ruling made in the course of a trial or hearing of any cause or matter which does not finally dispose of the rights of the parties;

[26] The case of *Kempadang Bersatu Sdn Bhd v Perkayuan OKS No 2 Sdn Bhd* [2019] 4 MLJ 614, decided by the Federal Court, sets out the statutory interpretation in respect of s 3 and s 67 of the CJA in the following passages:

Construction of sub-s 67(1) of the CJA

[25] Sub-section 67(1) is a general provision conferring jurisdiction on the Court of Appeal to hear and determine appeals against the decision of the High Courts. It states that 'any judgment or order' of the High Court which is made in the exercise of its original or of its appellate jurisdiction is appealable. However this right of appeal is always subject to any statutory provisions in the CJA or other statutes limiting appeals. On this basis, the provision of s 67(1) of the CJA is to be read together with the provisions in the CJA and other statutes which impose terms and conditions of an appeal.

[26] *Civil matters which are not appealable to the Court of Appeal are listed in sub-s 68(1). For instance, there can be no appeal against a judgment or order made by consent of parties or a judgment or order which has been declared final by a statute. Another restriction to appeal can be discerned from the provision of s3 of the CJA when it qualifies the word 'decision' as opposed to a 'ruling' of the court.*

[27] Section 3 is not a specific provision limiting appeals. Section 3 is the interpretation section of the CJA. It merely defines what a decision is, for the purpose of the CJA.

[28] On the interpretation of the word 'decision', the relevant paragraph in s 3 is divided into two parts. The first part identifies 'decision' in the form of 'judgment, sentence or order' of the court. It provides an extensional definition of the word decision by listing instances of the set of things included therein. In other words the concept of decision is not explained but the objects that fall under this word are listed.

[29] The second part of the paragraph qualifies that these forms of decision do not

include 'any ruling made in the course of a trial or hearing of any cause or matter which does not finally dispose of the rights of the parties'. It is noted that the second part was inserted in s 3 by Act A1031 which came into effect on 31 July 1998. Based on the said provision, at what juncture a ruling is issued plays a vital role in determining whether such an order is a ruling within the context of s 3. *There must be a trial in existence or a hearing and that the order is issued in the course of that trial or hearing. Secondly, the ruling must not have the effect of disposing the final rights of the parties*.

[46] However, much emphasis was placed on this argument thus overlooking the question of at what juncture was the learned JC's order made? *It is critical to note that when scrutinising the word 'ruling' in s3 of the CJA, it is important to examine at what juncture an order is made. This and the effect of such order is to be read conjunctively*.

[47] *If an order was not made in the course of a trial or matter, regardless of the fact that it does not dispose of the rights of the parties, such an order is not a ruling as defined in s3 of the Act and is therefore appealable*. This was decided by the Court of Appeal in the case of *Syarikat Tingan Lumber Sdn Bhd v Takang Timber Sdn Bhd* [2003] 2 MLJ 495. *On the facts of the case, the Court of Appeal held that an appeal against the ruling of the registrar on the admissibility of certain documents in the course of a hearing for assessment of damages is incapable of appeal*. (Emphasis added.)

[27] What is clearly discernible from the decision is the following:

(a) only a 'decision' as opposed to a 'ruling' is an appealable matter;

(b) the juncture in which a ruling is issued is determinative of whether such an order is a 'ruling' within the context of s 3;

(c) there must be a trial in existence or a hearing and that the order is issued in the course of that trial or hearing; and

(d) if an order was not made in the course of a trial or matter, regardless of the fact that it does not dispose of the rights of the parties, such an order is not a ruling as defined in s 3 of the Act and is therefore appealable.

[28] Applying this to the facts before us, it is clear that these appeals emanate from interlocutory matters in the course of a judicial review application which has yet to be heard.

[29] These orders were not made in the course of a trial or matter and are therefore not rulings within the meaning of s 3 and thus appealable.

[30] The PO is in the premises dismissed and these appeals are competent.

A ANALYSIS AND DECISION

[31] After reading and hearing submissions, both oral and written, of both parties, our considered view and decision, which is unanimous, is as follows.

B *Interrogatories*

[32] The reasons, which bear repetition, given by the HCJ in granting the application for interrogatories, were as follows:

C (a) the building plans that were approved by the appellant for the other premises complete with their respective specifications will prove that the said premises has been renovated very similarly to the other premises;

(b) similarly, the certificates of completion and compliance ('CCCs') issued by the appellant for the other premises subsequent to the completion of the renovations on the same will prove that the appellant had approved renovations that were carried out on the other premises;

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(c) if no CCCs had been issued by the appellant for the other premises, this will directly prove that the appellant has failed to carry out its responsibility as a local authority in a consistent and fair manner in that the owners and/or occupiers of the other premises had been permitted by the appellant to occupy their respective premises despite the fact that the renovations on their respective premises had not been approved by the appellant;

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(d) it will show mala fides and discrimination on the part of the appellant in that the respondent had been prevented from occupying the premises solely on the grounds that his renovations had not been approved by the appellant and that the owners of the other premises would appear to be getting preferential treatment from the appellant despite the fact that their renovated premises had not been approved by the appellant; and

G

(e) the appellant is at liberty to deny the respondent's 'conclusions and deduction' based upon the photographs and the assessment bills of the other premises by simply answering the questions put in the interrogatories.

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[33] Premised on the above, the HCJ reasoned that the interrogatories application would assist the court in coming to a finding in respect of the illegality point.

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[34] This, the HCJ opined, would enable the court to answer the question of whether the appellant had acted consistently and fairly in the exercise of its statutory powers.

[35] The HCJ also stated that this would also determine whether the respondent had a legitimate expectation that he would be permitted to occupy the premises. A

[36] The aspect of illegality and legitimate expectation are of course, well entrenched and recognised principles in determining whether a decision by a tribunal is subject to curial intervention and indeed whether the decision of the tribunal ought to be impugned as being unreasonable according to the *Wednesbury* principles. B

[37] See the list of recognised grounds for judicial review formulated by Lord Diplock in the seminal case of *Council of Civil Service Unions & Ors v Minister for the Civil Service* [1985] AC 374; [1984] 3 All ER 935. C

[38] Added to the list of those grounds is also the aspect of procedural impropriety or 'fairness' which concerns the failure of a decision maker to observe basic rules of natural justice and or procedural rules which includes a failure to give reasons. D

[39] See also the case of *Pengarah Tanah dan Galian, Wilayah Persekutuan v Sri Lempah Enterprise Sdn Bhd* [1979] 1 MLJ 135 which held, inter alia, that a public authority which is entrusted with a discretion must act reasonably. E

[40] The HCJ was therefore correct in addressing his mind to these principles in coming to his decision. F

[41] The HCJ had further referred to O 26 r 1 of the Rules of Court ('the ROC') which relates to interrogatories and the case of *Sheikh Abdullah bin Sheikh Mohamad v Kang Kock Seng* [1975] 1 MLJ 89 at p 90 and the Singapore High Court case of *Overseas-Chinese Banking Corp Ltd v Norman Wright & Ors* [1989] 3 MLJ 73. G

[42] The HCJ then went on to state in his grounds that the principles to be distilled from the said order and the case laws referred to is that the court should only exercise its discretion to order interrogatories when they are relevant or necessary to dispose fairly of the matter or to save costs. H

[43] The HCJ had further made a comparison based upon a list of properties in the neighbourhood which showed which properties had approvals given for renovation and those that were not, based upon the annual assessment rates charged. I

A **[44]** The HCJ astutely observed that the increase in assessment rates for premises No 16 in the list was prima facie evidence of the appellant having approved the renovation works carried out there whereas the standard assessment rates imposed upon the other properties in the list was prima facie evidence that the renovations on those properties had not been approved.

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[45] This, in the view of the HCJ, showed that the appellant had failed to act fairly and consistently in the exercise of its statutory powers.

C **[46]** Finally, the HCJ held that in issuing the demolition order only to the respondent, the appellant had demonstrated that it had failed to act consistently and fairly in the exercise of its powers.

[47] The powers granted to the courts of law in the area of judicial review are D necessary to place limits and curbs on the exercise of powers by those who are colloquially often referred to as 'Little Napoleons'.

[48] These are people who perceive themselves to be all powerfull and who think they have the power to impose any kind of law, rules and regulations they E see fit without the need to adhere to the limits imposed by the law.

[49] It therefore behoves us to quote the immortal words of Thomas Fuller, echoed by the equally immortal Lord Denning centuries later, as a reminder to F such persons that, 'be ye never so high, the law is above ye'.

[50] These sentiments were echoed by His Late Majesty Raja Azlan Shah in *Pengarah Tanah dan Galian, Wilayah Persekutuan v Sri Lempah Enterprise Sdn Bhd* where His Majesty said that '… Unfettered discretion is a contradiction in G terms … Every legal power must have legal limits, otherwise there is dictatorship'.

[51] The HCJ had therefore in all the circumstances, addressed his mind correctly to the relevant legal principles and determined that allowing the H interrogatories would result in saving time and costs and had provided cogent reasons for so doing.

[52] It also bears recollection that as a result of the Facebook posting going viral, Pn Norizan bt Sulaiman, the Director of the appellant's Building Control I Department was livid with the respondent and had also threatened that if the appellant's demolition order was not complied with immediately, the respondent would be imprisoned.

[53] Despite the plea of the architects representative to negotiate with Pn Norizan to allow him to submit an application to amend the building plans for the respondent's premises, Pn Norizan was adamant that such amendment application would not be approved by the appellant.

[54] On 30 April 2021, the appellant issued a demolition notice ordering the respondent to stop construction on the structure and to demolish the said structure that had not been approved and subsequently proceeded to seal up the premises and thereby preventing the respondent from entering and occupying the premises.

[55] The circumstances of this application must therefore be considered against the backdrop of the hostility emanating from the representative of the appellant in the person of the said Pn Norizan and the ensuing possible mala fides in respect of the decision making process.

[56] They are therefore highly relevant to the reasonableness and fairness of the decision made by the appellant.

[57] All of the above observations similarly applies to the application for discovery.

[58] The HCJ had not therefore committed any error that warranted appellate interference and we unanimously uphold the decision of the HCJ.

[59] The appeal against High Court encl 19 in respect of the granting of interrogatories is thus dismissed with costs.

Discovery

[60] The reasons given by the HCJ in allowing the application for discovery were essentially identical to the reasons given in allowing the application in respect of interrogatories except for the exclusion of two grounds.

[61] Although reproducing them here will result in some amount of repetition, for the sake of completeness, ease of reference to the parties involved in reading these grounds, for context, and better appreciation of the issues involved, the said reasons are reproduced verbatim here again with neccesary modifications as follows:

(a) the building plans that were approved by the appellant for the other premises complete with their respective specifications will prove that the said premises has been renovated very similarly to the other premises;

(b) similarly, the certificates of completion and compliance (CCCs) issued

by the appellant for the other premises subsequent to the completion of the renovations on the same will prove that the appellant had approved renovations that were carried out on the other premises;

(c) however, if no CCCs had been issued by the appellant for the other premises, this will directly prove that the appellant has failed to carry out its responsibility as a local authority in a consistent and fair manner in that the owners and/or occupiers of the other premises had been permitted by the appellant to occupy their respective premises despite the fact that the renovations on their respective premises had not been approved by the appellant.

[62] The HCJ also reasoned that an order of discovery will exhibit any mala fide and/or discrimination on the part of the appellant, if any, in that it might show that the respondent was prevented from occupying his property on grounds that his renovations were not approved by the appellant.

[63] The HCJ further made a finding that the owners of the other premises would appear to be getting preferential treatment from the appellant despite the fact that their renovated premises respectively had not been approved by the appellant.

[64] In respect of the 'WhatsApp' communication between Pn Nor Iz Hayza and Muhammad Laswi, the HCJ was of the view that the complete 'WhatsApp' conversation between the parties concerned would provide a complete picture of the payments that were made to Pn Nor Iz Hayza.

[65] The HCJ opined that the 'WhatsApp' communication between the parties, becomes relevant since the respondent is unable to contact Muhammad Laswi for the purpose of swearing an affidavit regarding the payments made to Pn Nor Iz Hayza as the respondent is unaware of the formers whereabouts. The HCJ had therefore correctly and properly addresed his mind to the relevant issues in coming to his decision.

[66] The HCJ concluded by stating that since the documents that constitute the subject matter of the discovery application are in the custody of the appellant, they have a legal duty to produce the documents for the consideration of the court so that the judicial review application can be disposed of fairly.

[67] The relevant factual matrix with regard to the Facebook posting going viral are set out above and need not be repeated. The consequences of the

Facebook posting going viral and the possible effect it had with regard to the decisions made by the appellant have been considered above and similarly need not be repeated.

[68] To summarise, the grounds upon which the HCJ decided to allow the application include mala fide, discrimination and illegality.

[69] Similar to the reasons given in respect of the application for interrogatories, these constitute valid and recognisable grounds for curial intervention by way of judicial review.

[70] The HCJ also alluded to O 53 r 6 of the ROC read together with O 24 of the ROC which relate to discovery of documents and correctly held that the essential elements for an order for discovery are firstly, that there must be a document, secondly, the document must be relevant and finally, the document must be or have been in the 'possession, custody or power' of the party against whom the order for discovery is sought.

[71] The HCJ also referred to the relevant case of, inter alia, *Yekambaran s/o Marimuthu v Malayawata Steel Berhad* [1993] 4 MLRH 380; [1994] 2 CLJ 581]) and the Court of Appeal decision in *Rekapacific Bhd v Securities Commission & Anor and other appeals* [2005] 2 MLJ 269; [2004] 2 MLRA 571; [2005] 2 CLJ 108; [2005] 2 AMR 489 in coming to his decision.

[72] The HCJ more significantly, made the pertinent observation that the respondent's judicial review application concerns the exercise of the appellant's power under s 72(1) of Act 133 to issue a notice to the owner of land requiring him to demolish a building that has been erected in contravention of s 70 of Act 133 and as a consequence the question of whether the renovation on other premises had been approved by the appellant or not is an essential question in the instant judicial review application.

[73] This astute observation on the part of the HCJ holds true both in respect of the discovery as well as the interrogatories application.

[74] The HCJ had thus apprised himself of the correct legal principles in respect of applications for discovery and had correctly applied these principles in coming to his decision.

[75] The HCJ had not therefore committed any error that warranted appellate interference and we unanimously uphold the decision of the HCJ.

A **[76]** The appeal against High Court encl 21 in respect of the granting of the discovery application is thus dismissed with costs.

[77] Both appeals are hereby dismissed with total costs of RM15,000.

B *Appeals dismissed.*

Reported by Ashok Kumar

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